United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

1969

BRIEF FOR APPELLANT AND JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,145

DORA L. LEVINE,
Appellant,

v.

DR. HAROLD H. KATZ,
T/A QUEENS PARK PLAZA APARTMENTS,
and
SHANNON & LUCHS COMPANY,
(A Delaware Corporation),
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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STATEMENT OF QUESTIONS PRESENTED

The questions are:

1. Whether during the course of a trial for injuries sustained as the result of a slip and fall in a common entrance and hallway of an apartment project can the Trial Court, *sua sponte*, interrupt the plaintiff's presentation of her case and enter an order directing a verdict without permitting the plaintiff to present testimony of other witnesses as to notice and condition.

2. Whether a grandmother paying a social visit to her granddaughter (a tenant in a multi-unit garden-type apartment project) who was injured in a common entrance and hallway of one of the project buildings, where she had a lawful right to be, may maintain an action against the project owners, operators, and controllers for failure to exercise *ordinary care* to protect her against conditions, permanent or temporary, which were dangerous.

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TABLE OF CASES AND AUTHORITIES

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal, in an action for personal injuries (JA 1), from an order entered by the United States District Court for the District of Columbia on March 24, 1967, denying plaintiff's motion for new trial (JA 30) following the entry of a directed verdict in favor of the defendants on March 15, 1967 (JA 27). Jurisdiction of the United States District

Court was laid under Title 11, Sec. 521, District of Columbia Code, 1961 Edition, Supp. V. Notice of appeal was timely filed on April 21, 1967 (JA 30). Jurisdiction of this appeal is given by 28 U.S.C., Sec. 1291.

STATEMENT OF CASE

Appellant Dora L. Levine (hereinafter referred to as plaintiff) and her husband Harry Levine[1] brought an action for personal injuries against appellee Dr. Harold H. Katz (hereinafter referred to as defendant), several John and Jane Does[2], and appellee Shannon & Luchs Company (hereinafter referred to as defendant). (JA 1-3)

On Saturday, October 12, 1963, the plaintiff, an elderly woman (approximately 63 years of age at the time), accompanied by her husband, for the purpose of visiting her granddaughter (a tenant resident) was in the process of entering the premises 2500 Queens Chapel Road, Hyattsville, Prince Georges County, Maryland, one of the units of the Queens Park Plaza Apartments, a multi-unit apartment dwelling, when she stepped on a floor mat which had been placed on a highly polished and slippery floor in the common entrance hallway. The mat slipped and plaintiff fell causing her to sustain a fractured ankle and other injuries. (JA 5-8) The floor mat had been placed in its position by the defendants or had been permitted to remain in position

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[1] Prior to trial, Harry Levine died and his cause of action was dismissed at the pretrial. (JA 4)

[2] Counsel for the defendants filed a general answer on behalf of the John and Jane Does. Discovery revealed the John and Jane Does to be seven identifiable persons. At the pre-trial, plaintiff substituted the real names for the John and Jane Does. At trial, the Court ruled that the John and Jane Does, although identified and counsel having entered a general appearance for them, were not properly before the Court. The trial proceeded with the John and Jane Does as not being defendants. The issue of the removal of the John and Jane Does as parties is not made a part of this appeal. (Pretrial Order and part of transcript not ordered).

by the defendants who had knowledge of its presence or should have had knowledge of its presence.[3] (JA 18) The floor mat was partially concealed from persons entering the corridor by the entrance door. The floor mat consisted of strawlike material and was of the common variety intended to be used for the wiping of feet. This type of floor mat is intended for outside use on a rough surface. In this instance, the mat was placed in the interior of the building upon polished tile flooring. The undersurface of the mat did not have any adhesive or anchoring material. (JA 18-19 and photographs)

Defendant Dr. Harold H. Katz and other persons,[4] as members of a joint adventure, were the owners and operators of the apartment house project. (JA 4) The corporate defendant Shannon & Luchs Company was the agent of the owners and operators and, under the terms of a contract, had the complete management and control of the apartment house project. (JA 4).

The plaintiff's case was founded upon negligence. In proof of her claim she presented the testimony of herself, her granddaughter's husband, her physician, defendants' answers to interrogatories, stipulations, and photographs of the scene of her accident. Had the plaintiff's case not been interrupted by the Trial Court, she would have offered the testimony of her granddaughter and daughter.

At the conclusion of the testimony of the plaintiff's granddaughter's husband, the Trial Court interrupted the proceedings and indicated that he was going to direct a verdict in favor of the defendants. (JA 21) Counsel for the plaintiff was permitted to argue and took the position that a motion for directed verdict had been made. At this point counsel for the defendants made such a motion. (JA 22-23)

[3]Had the Trial Court not interrupted plaintiff's presentation of her case, the elements of condition and notice would have been developed further than they appear in the record. (JA 21)

[4]See Fn. 2, *supra.*

The Trial Court ruled that the defendants were not under a duty to exercise ordinary care with respect to the plaintiff because she was a social visitor to the apartment house project. (JA 26-27) The Trial Court conceded that it would not have directed a verdict against the plaintiff if she were a tenant. (JA 23-24)

The plaintiff filed a timely motion for new trial which was denied without hearing. (JA 29-30)

RULES INVOLVED

Federal Rules of Civil Procedure

Rule 50. MOTION FOR A DIRECTED VERDICT

(a) *Motion for Directed Verdict: When Made; Effect.* A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury. As amended January 21, 1963, effective July 1, 1963.

* * *

Rule 76. RECORD ON APPEAL TO A COURT OF APPEALS; AGREED STATEMENT

When the questions presented by an appeal to a court of appeals can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are

essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the appellate court as the record on appeal. As amended December 29, 1948, effective October 20, 1949.

STATEMENT OF POINTS

1. The Trial Court erred when it, *sua sponte,* halted the appellant's presentation of her case and directed a verdict in favor of appellees before all of appellant's evidence was introduced.

2. The Trial Court erred when it directed a verdict in favor of appellees and against the appellant on the ground that the appellant, as a social visitor of her granddaughter, a tenant in a multi-unit garden type apartment project, who was injured in a common entrance and hallway of one of the project buildings where she had a lawful right to be was not entitled to a duty from appellees, the project owners, operators, and controllers, of ordinary care to protect her against conditions, permanent or temporary, which were dangerous. The Trial Court's error is compounded by its concession that the verdict would *not* have been directed if appellant had been a tenant. The Trial Court was in error when it ruled that the landlords' duty to the tenant was not the same as the duty to a guest of the tenant.

3. The Trial Court erred in not granting appellant's motion for a new trial which raised the issues of the premature ordering of a directed verdict and the erroneous ruling with respect to appellant's status while on appellees' property.

SUMMARY OF ARGUMENT

A. The Court is not confronted with any problem of conflict of laws or choice of laws. The controlling law in the District of Columbia is identical to the law in Maryland. The Court need not concern itself with the fact that the situs of the injury was Maryland, that the forum was the District of Columbia and that the parties were District of Columbia domiciled or based.

B. The Trial Court was in error when it, *sua sponte*, interrupted plaintiff's case and directed a verdict without permitting plaintiff to present all of her witnesses. The proper time for a motion for directed verdict is at the close of the evidence offered by a party. The additional evidence was material to the issues of notice and condition.

C. 1. In a slip and fall case, the Trial Court was in error in ruling that a grandmother paying a social visit to her granddaughter, a tenant in a multi-unit garden type apartment, was not entitled to the duty of ordinary care from the granddaughter's landlord as to dangerous conditions existing in the common-use areas of the premises. The prevailing rule in the United States is to the contrary.

C. 2. and 3. The case law in Maryland and the District of Columbia demonstrates that the landlord's ordinary care duty owed to a tenant is also owed to a social visitor.

C. 4. The leading text authorities support the proposition that the law in the United States is to the effect that a social visitor to a multi-unit apartment house project is entitled to ordinary care from the landlord.

C. 5. The trial Court misapplied the one Maryland case it cited and failed to consider the other leading cases dealing with the specific problem which is here under consideration.

C. 6. The Trial Court conceded that a verdict would not have been directed against the plaintiff if she had been a

tenant. The sole basis of the Trial Court's ruling was plaintiff's status as a social visitor. The ruling in the Trial Court was not based upon matters of negligence, contributory negligence, assumption of risk, and notice.

D. The plaintiff having presented the Trial Court with an opportunity to correct its own error, it was error for the Trial Court to fail to grant plaintiff's motion for a new trial.

E. Considering the principal issue involved in this appeal, i.e., duty owed to social visitor, it was unnecessary for the defendant to force the plaintiff to order a transcript of the testimony, and the Court is urged to keep this in mind in taxing and allocating costs.

ARGUMENT

A

No Problem of Conflict or Choice of Laws Is Present

Although the injury occurred in the State of Maryland, and suit was brought in the District of Columbia, and the parties before the Court are residents of the District of Columbia or principally based in the District of Columbia, there is no problem presented to the Court to determine which law is applicable. As will be more fully developed below, the law of Maryland and the law of the District of Columbia are not in conflict with respect to the duty owed a social visitor of a tenant in a multi-unit apartment house. See *Dovell v. Arundel Supply Corporation*, 124 U.S. App. D.C. 89, 361 F.2d 543 (1966). Not present in this case are the problems presented in *Tramontana v. S.A. Empresa De Viacao Aerea Rio Grandense*, 121 U.S. App. D.C. 338, 350 F.2d 468 (1965), certiorari denied, *sub nom., Tramontana v. Varig Airlines*, 383 U.S. 943 (1966); *Williams v. Rawlings Truck Line, Inc.*, 123 U.S. App. D.C. 121, 357 F.2d 581 (1965); and the other cases in this jurisdiction which have followed.

B

The Trial Court Should Not Have Directed a Verdict Against Plaintiff Prior to Completion of Her Case

The Trial Court erred when it, *sua sponte*, interrupted plaintiff's presentation of her case and prevented her from presenting further witnesses with respect to notice and condition, issues relevant in any slip and fall claim. The Trial Court directed a verdict in favor of the defendants. It did not grant a motion dismissing for failure to state a cause of action, and it did not grant a motion for summary judgment. Motions for directed verdict are governed by Rule 50(a) of the Federal Rules of Civil Procedure, *supra*. The Rule provides that the time for making such a motion is at the close of the evidence offered by an opponent. Experienced defense counsel in this case was quite aware of when the motion could properly be made and did not make such motion for directed verdict until the motion was impliedly invited by the Court when plaintiff's counsel asked the Court if he should proceed with his argument in opposition as though a motion for directed verdict had been made. The untimely granting of the motion for directed verdict not only prevented plaintiff from completing her case but also deprived this Court of a full record. The witnesses were present and should have been permitted to testify. In the absence of hearing all of the plaintiff's witnesses, how can it be said that the Trial Court in determining whether a directed verdict should be entered viewed plaintiff's case in its most favorable light, drawing all legitimate inferences possible from her evidence.

C

The Trial Court Erred in Ruling That a Social Guest of a Tenant in an Apartment House Was Not Due Ordinary Care From Landlord

1. Introduction

The Trial Court erred when it directed a verdict in favor of the defendants on the basis that one who is a social visitor of a tenant in a multi-unit apartment project is not entitled to the same degree of care from the landlord as is the tenant. The universal rule in the United States is to the contrary. The duty the landlord owes the social visitor is coextensive with the duty owed the tenant, and that duty is to exercise ordinary care for the safety of the tenant and the social visitor. Any other rule would be out of step with life in the United States in 1967. Such a substantial number of the population in the United States now resides in multi-unit apartments that any other rule would be unrealistic. The Maryland Court of Appeals recognized this fact of our modern living when it said in *Langley Park Apartments, Sec. H, Inc. v. Lund,* 199 A.2d 620, 623, 234 Md. 402 (1964):

> The multi-unit apartment dwelling is rapidly becomming commonplace, especially in our growing suburban areas in and around Baltimore City and Washington, D.C. In any one unit are apt to be the very young and the very old, non-working residents who seldom venture far beyond the apartment complex. They, and all others lawfully using the common walkways, must be provided with reasonably safe approaches to and from their apartments and the public streets.

As will be developed below, the theme of the cases and authorities is that an apartment house complex serves a particular function in our modern day living. This fact is known to one who operates an apartment house. The operator knows that the tenants will have social visitors and, therefore, can anticipate that one of the functions in the

operation of an apartment house is to protect the social guests of the tenants. The common entranceways and hallways over which the operator retains control are intended for the use of the tenants and their guests. As long as the social visitor uses a portion of the apartment house for which it is intended to be used, then the social visitor is entitled to be protected by the exercise of ordinary care.

If the Trial Court were correct in its understanding of the law, certainly experienced defense counsel would have filed a motion to dismiss or for summary judgment long before trial.

2. The Law of Maryland

The case law in Maryland clearly establishes that a guest of a tenant is entitled to the duty of ordinary care.

Landay v. Cohn, 150 A.2d 739, 220 Md. 24 (1959). This case clearly holds that one who is invited onto the land by a tenant of the landlord is entitled to recover from the landlord for the landlord's failure to exercise reasonable care over those portions of the premises over which he maintains control. In this case the injured party was a 6 year old infant plaintiff who was invited onto the land by the infant child of a tenant. The Maryland Court treats the guest of the tenant as an invitee. Specifically quoting the Court at pages 740-741, the Court stated:

> Where a landlord leases separate portions of a property to different tenants and reserves under his control halls, stairways or other parts of the property for use in common by all the tenants, he must use ordinary care and diligence to maintain the retained parts in reasonably safe condition. *Seaman v. State*, 213 Md. 359, 366, 131 A.2d 871; *McKenzie v. Egge*, 207 Md. 1, 7, 113 A.2d 95; *Ross v. Belzer*, 199 Md. 187, 190, 85 A.2d 799; *Levine v. Miller*, 218 Md. 74, 78, 145 A.2d 418. The duty stems from the responsibility engendered in the landlord by his having extended an invitation, express or implied, to use the portion

> of the property retained by him. *Crown Cork & Seal Co. v. Kane,* 213 Md. 152, 131 A.2d 470; 32 Am. Jur. Landlord & Tenant § 688, p. 563; 52 C.J.S. Landlord and Tenant § 417(b), p. 26; Prosser, Torts, 2nd Ed., § 80, p. 471. Such an invitation extended to a tenant includes the members of his family, his guests, his invitees and others on the land in the right of the tenant. Restatement, Torts, Sec. 360, comment (d); Prosser, op. cit., § 80, p. 471. It has been held that a child on the land at the invitation of the child of the tenant is entitled to the benefit of the landlord's obligation in this respect. *Harakas v. Dickie,* 224 Mo. App. 171, 23 S.W.2d 651; *Coughlin v. Jones,* 162 Misc. 843, 295 N.Y.S. 681, affirmed 254 App. Div. 854, 6 N.Y.S.2d 363. See also *Mercier v. Bushwick Sav. Bank,* 261 App. Div. 151, 24 N.Y.S. 2d 666; and Annotation 26 A.L.R.2d 468, 477.

Likewise, *Sezzin v. Stark,* 49 A.2d 742, __Md.__(1946); *Sherwood Bros. v. Eckard,* 105 A.2d 207, __Md.__(1954); *Langley Park Apartments, Sec. H., Inc. v. Lund,* 199 A.2d 620, 234 Md. 402 (1964). Those cases also illustrate that the general rule is applicable in Maryland, and a landlord of a multi-unit apartment house is liable to the guests of his tenants, the guests being lawfully upon the premises.

3. The Law of the District of Columbia

The case law in the District of Columbia also clearly establishes that a guest of the tenant is entitled to the duty of ordinary care.

> *Wardman v. Hanlon,* 52 App. D.C. 14, 17, 280 F. 988 (1922)
>
> * * * [A] landlord who rents different parts of a building to various tenants and retains control of the stairways, passageways, hallways, or other methods of approach to the several portions of the building for the common use of the tenants has resting upon him an implied duty to use reasonable care to keep such places in a reasonably safe condition, and that he is liable for injuries which result to per-

> sons lawfully in the building from a failure to perform such duty.
>
> *Pessagno v. Euclid Inv. Co.*, 72 App. D.C. 141, 112 F.2d 577 (1940).

In this case, the Court applied the general apartment house rule to the appellant plaintiff who was a guest of a tenant in the aprtment house. This case, standing by itself, is sufficient ground for reversing the Trial Court. The Court stated at page 143, (App. D.C.), the rule as follows:

> * * * the obligation of the owner of a large apartment house not only to exercise ordinary care to construct the approaches and other parts of the building under his exclusive control so that they will be reasonably safe, but likewise, after notice, to exercise ordinary care to keep them free from conditions, whether permanent or temporary, which make them dangerous to the tenants or their guests.
>
> See *Walker v. Dante*, 61 App. D.C. 175, 58 F.2d 1076 (1932).
>
> *Nielsen v. Barclay Corporation*, 103 U.S. App. D.C. 136, 137, 255 F.2d 545 (1958)
>
> * * * on the other, and it seems clear that as a guest of the tenants, appellant was entitled to the same duty of care as were the tenants.

In this case the injured plaintiff was visiting the apartment of her fiance.

> *Lord v. Lencshire House, Ltd.*, 106 U.S. App. D.C. 328, 272 F.2d 557 (1959)

At page 331, (U.S. App. D.C.), the rule again is stated as being applicable to tenants or their guests. Note the emphasis that the Court places on the word "lawfully."

> *Rodenbur v. Kaufmann*, 115 U.S. App. D.C. 360, 320 F.2d 679 (1963).

At page 362 (U.S. App. D.C.), again the Court states that the rule is applicable to tenants or their guests.

Gould v. DeBeve, 117 U.S. App. D.C. 360, 330 F.2d 826 (1964)

Rule made applicable to 2½ year old boy who was a live-in "guest" of the tenant.

Beck v. Shannon and Luchs Co., 174 A.2d 199 (Mun. Ct. App. D.C. 1961)

The Municipal Court of Appeals for the District of Columbia, following the decisions of the United States Court of Appeals for the District of Columbia, at page 200, states that the rule applies to tenants or their guests.

4. Text Authorities

The text authorities on the subject are in accord.

32 Am. Jur., Landlord and Tenant, Secs. 691 and 768

Quoting page 568:

> The duty of a landlord to have property under his control, such as common passageways, reasonably safe extends also to all those who have lawful occasion to visit the tenant for social purposes.

Personal Injury Actions, Defenses, Damages (Matthew Bender & Company), Landlord and Tenant, Sec. 1.01 [2] (1957)

Quoting from Vol. 4, pp. 688-690:

> Ordinarily, landlord owes same duty to tenant and to persons on premises in tenant's right, such as, for example, members of tenant's family, social guests, invitees and licensees generally, employees, customers, boarders and lodgers, and subtenants and persons on premises in latters' right.

52 C.J.S., Landlord and Tenant, Sec. 417 (2) (a)

Quoting pp. 29-30:

> Where the halls, stairways, and other approches to a building are reserved by the landlord for use in common by himself and tenants, or by different tenants, as a general rule the landlord is under an implied duty to use reasonable care to keep such places in a

> safe condition and is liable for injuries to the tenant or other persons lawfully using those places which occur as result of his failure to perform that duty.

Restatement, Torts, 2nd Ed., Sec. 360.

> A possessor of land who leases a part thereof and retains in his control any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sublessee for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe.

This section of the Restatement of Torts has been cited by the Maryland Court of Appeals with approval. See *Landay v. Cohn*, 150 A.2d 739, 741, 220 Md. 24 (1959). A study of the Reporter's notes indicates that it was the intention of the American Law Institute to make this section applicable to social visitors of the tenants in apartment houses.

Prosser, Handbook of the Law of Torts, 3rd Ed., (1964), Sec. 63, pp. 418-419:

> When different parts of a building, such as an office building or an apartment house, are leased to several tenants, the approaches and common passageways normally do not pass to the tenant, but remain in the possession and control of the landlord. The tenants are permitted to make use of them but do not occupy them, and the responsibility for their condition remains upon the lessor. His position is closely analogous to that of a possessor who permits visitors to enter for a purpose of his own; and those who come in the course of the expected use may be considered as invitees, as a good many Courts have said. He is therefore under an affirmative obligation to exercise reasonable care to inspect and repair such parts of the premises for the protection of the lessee; and the duty extends also to members of the

> tenant's family, his employees, his invitees, his guests, and others on the land in the right of the tenant, since their presence is a part of the normal use of the premises for which the lessor holds them open.

Professor Prosser's position has been cited with approval by the Maryland Courts of Appeals. See *Landay v. Cohn,* 150 A.2d 739, 741, 220 Md. 24 (1959).

Annotation 26 A.L.R. 2nd 468, 477:

> Generally it may be stated that the landlord's invitation to make use of the common passageways is extended to all of the tenants and rightful occupants of the premises who, from all of the surrounding circumstances, would normally be expected to use the common passageways in connection with their occupancy. And the landlord's invitation is also generally regarded as having been extended to those persons coming on the premises in connection with normal or social or business relations with the tenants or occupants, who would normally be expected to use the common passageways.

5. Trial Court's Misapplication of Maryland Authority

In arriving at the decision to enter a directed verdict, the Court announced that the case of *Levine v. Miller,* 145 A.2d 418, 218 Md. 74 (1958), was controlling of the plaintiff's case. The Court misapplied the *Levine* case. In the *Levine* case, the injured infant plaintiff was the child of a tenant in an apartment house project, the child having been injured in a recreation room six hours after her right to use the room had expired. The child's use of the room was without permission or even the knowledge of the landlord. The child was in a portion of the project where she had no right to be and at a time when she had no right to be there. The Maryland Court treated the child as a mere licensee and implied that she might even be considered a trespasser. The Court said, at page 421 (A.2d):

> One may be an invitee or business visitor as to one portion of the premises, or for a limited time, and be a licensee or trespasser as to another portion of the same premises or, without changing location, undergo the same change in status by the lapse of time.

It is quite obvious that the Maryland Court distinguished the locked recreation room from the public portions of the apartment project under the control of the landlord which public portions the tenants used as a matter of express or necessarily implied right. Had the child been in a public portion of the building where she had a right to be at a time when she had a right to be there, there is no question that the Maryland Court of Appeals would have treated the child as an invitee.

6. Status of Plaintiff Was Sole Basis for Ruling of Trial Court

The Court must keep in mind that all the Trial Court ruled upon was the plaintiff's status upon the land of the defendants. The Court made it quite clear that a verdict would not have been directed in favor of the defendants if the plaintiff had been a tenant. From this statement of the Trial Court, it can be inferred that the Trial Court was satisfied that the plaintiff had made a prima facie case of failure to exercise ordinary care. The Trial Court did not specifically make any rulings with respect to such matters of negligence, contributory negligence, assumption of risk, and notice. Obviously the Trial Court could not have made any such rulings because plaintiff was not permitted to finish her case.

D

It was Error Not To Have Granted Plaintiff's Motion for New Trial

The Trial Court erred when it failed to grant plaintiff's motion for new trial. The plaintiff made a timely motion for new trial and cited to the Trial Court all of the authorities cited to this Court. Having been given the opportunity

to correct its error, the Trial Court should have done so, and plaintiff's motion for a new trial should have been granted.

E

Statement of Proceedings Should Have Been Used and Not Transcript of Testimony

Recently this Court, in *Holmes v. United States,* No. 20,042, Supplemental Opinions released May 11, 1967, called attention to a crisis which is manifesting itself in this Circuit. This Court was concerned with the unnecessarily large portions of trial transcripts which were being transcribed for use on appeal. None of the transcript in this appeal was necessary other than the small portion dealing with the Trial Court's directing of a verdict. The factual background of this appeal could have been established in a one- or two-paragraph statement of the proceedings as provided for in Rule 76 *supra* of the Federal Rules of Civil Procedure. After all, the only issue involved in this appeal is the status of the plaintiff when she visited her granddaughter. The transcript of testimony was not necessary. Plaintiff's request to defendants for a statement of proceedings in lieu of a transcript was refused. This refusal in light of the main issue involved in this appeal was unreasonable and put plaintiff to much added and unnecessary expense. In addition, the time of the Court Reporters could have been spent preparing other necessary transcripts. Plaintiff asks the Court to keep these facts in mind at the time costs are taxed or allocated.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Trial Court erred in directing a verdict in favor of defendants and in denying plaintiff's motion for a new trial and that the ruling below should be reversed.

Respectfully submitted,

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Attorney for Appellant

CONTENTS OF JOINT APPENDIX

[Filed June 25, 1964]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DORA L. LEVINE
and
HARRY LEVINE
3307 Connecticut Avenue, N.W.
Washington, D. C.,

Plaintiffs

v.

DR. HAROLD H. KATZ
2025 Eye Street, N.W.
Washington, D. C.
and
Several other John Does and
Jane Does
Trading As: Queens Park Plaza
Apartments
and
SHANNON & LUCHS COMPANY
A Delaware Corporation
900 - 17th Street, N.W.,
Washington, D. C.

Defendants

Civil Action No. 1508-64

COMPLAINT FOR PERSONAL INJURIES
(Fall in Apartment House Corridor)

1. Jurisdiction is based upon the fact that the amount in controversy exceeds $10,000.00 exclusive of interest and costs.

2. The defendant Harold H. Katz and several other John Does and Jane Does on October 12, 1963, and at all other

times pertinent in this complaint were the owners and operators of the Queens Park Plaza Apartments, a multi-unit garden type apartment house project located on Queens Chapel Road, Hyattsville, Prince Georges County, Maryland.

3. The defendants Katz and Does have owned and operated the Queens Park Plaza Apartments continuously since March 1962 to the present time as a joint venture.

4. The defendant Shannon & Luchs Company, on October 12, 1963, and at all other times pertinent in this complaint under the terms of a rental agent contract with defendant-owners was in control and management of the maintenance and operation of the Queens Park Plaza Apartments project.

5. Since August 8, 1915, until the present time, the female plaintiff and the male plaintiff have been married to each other.

6. On October 12, 1963, the female plaintiff, while an invitee on the premises 2500 Queens Chapel Road, Hyattsville, Prince Georges County, Maryland, one of the units of the Queens Park Plaza Apartments project, as a result of defendants' negligence and carelessness in placing and maintaining a partially concealed floor mat on a too highly polished and slippery floor in the common corridor, slipped and fell, sustaining serious personal injuries.

7. As a result, the female plaintiff sustained a fracture in the region of the left ankle, torn ligaments in the left leg, and other bruises, contusions, and injuries to and about the body, all of said injuries being of a permanent nature; suffered and will continue to suffer great pain of body and mind; incurred and will continue to incur expenses for the following items: orthopedist, attending physician, medicines, medical appliances, transportation, and domestic help.

8. As a result, the male plaintiff has lost the consortium and services of the female plaintiff, and jointly with the female plaintiff has incurred and will continue to incur the expenses mentioned in Paragraph 7 above.

WHEREFORE, plaintiff Dora L. Levine demands judgment against defendants in the amount of Fifty Thousand Dollars ($50,000.00), plus interest and costs; and the plaintiff Harry Levine demands judgment against the defendants in the sum of Fifteen Thousand Dollars ($15,000.00), plus interest and costs.

JOSEPH LEVIN
Attorney for Plaintiffs

Plaintiffs demand trial by jury.

JOSEPH LEVIN
Attorney for Plaintiffs

[Filed Aug. 5, 1964]

ANSWER OF DEFENDANTS

Comes now the defendants, Dr. Harold H. Katz, Shannon & Luchs Company, a Delaware Corporation, and the several other John Does and Jane Does, and for answer to the complaint filed herein, aver as follows:

1. The defendants admit that on October 12, 1963, Dr. Harold H. Katz and several other John Does and Jane Does were the owners and operators of Queens Park Plaza Apartments and that the defendant, Shannon & Luchs Company, a Delaware Corporation, was the rental agent for this property.

2. The defendants deny each and every other allegation contained in the said complaint and denies that the plaintiffs, or either of them, were in any way injured or damaged by reason of any negligence of the defendants.

3. The defendants say that the injury and damage of the plaintiffs was caused by the failure of the female plaintiff to exercise reasonable care for her own safety and that the condition which caused her to fall was open and obvious to

an individual exercising reasonable care for her own safety, and the defendants say that it was her negligence which was the sole or contributing cause of any injury or damage sustained.

The premises considered, the defendants pray that the said complaint be dismissed with costs.

CORNELIUS H. DOHERTY
1010 Vermont Avenue, N.W.
Washington, D. C.
Attorney for Defendants

[Certificate of Service - August 25, 1964]

[Filed Nov. 15, 1965]

PRETRIAL ORDER

THE PARTIES AGREE TO THE FOLLOWING STATEMENT OF FACTS AND STIPULATE THERETO:

The male P has died since the filing of this action and his claim may be and is hereby dismissed.

On October 12, 1963, Ds Dr. Harold H. Katz and several other persons were the owners and operators of Queens Park Plaza Apts. and D Shannon & Luchs Co., Delaware Corporation, was the rental agent for the property 2500 Queens Chapel Road, Hyattsville, Prince Georges County, Maryland. Shannon & Luchs managed the property also.

N. F. Rubin was a tenant in said building.

* * *

EXCERPTS FROM THE PROCEEDINGS

[3] DORA L. LEVINE

was called as a witness in her own behalf, and having been duly sworn, was examined and testified as follows:

* * *

Q. What is your name? A. My name is Dora L. Levine.

Q. Are you married? A. Yes, sir.

Q. Is your husband still alive? A. No.

Q. When did he die? A. April 16 of this year.

[4] Q. 1966? A. 1966, yes, sir.

Q. How old are you? A. I can't tell exactly. About sixty-six or sixty something because we never knew records, you know, where I come from.

Q. Where did you come from? A. I come from Lithuania.

* * *

[5] Q. Now, Mrs. Levine, directing your attention to October 12, 1963. A. Yes, sir.

Q. Did you have occasion at that time to visit Queens Chapel Road in Prince Georges County? A. Yes, sir.

Q. Were you with anyone else? A. With my husband.

Q. Where were you going? A. I was going to see my granddaughter.

Q. Where did she live? A. 103 Queens Chapel Road—2500 Queens Chapel.

Q. What was that, an apartment house? A. One apartment.

Q. Did she live on—what floor— A. Second floor. She was on the second floor.

Q. Now how were you and your husband going to the apartment? A. He parked the car.

[6] Q. Were you in an automobile? A. I was in an automobile. My husband took me over. We were going out and I started to go, you know, kind of first, you know. He was right in back of me.

Q. Are you telling he parked the car at the apartment house? A. Yes, right in—

Q. Did– A. –right in the–

Q. Is there a parking lot there? A. Parking lot, yes.

And we started to walk in to go down steps first, go down, and then to go up. Now, outside was a big, large straw robe, whatever it was–a robe, I don't know what you call it–a bath mat, a mat.

Q. Where was this mat? A. The mat was one was outside. But as I opened the door, as I opened the door to enter the hall, to go up to my granddaughter, as soon as I walked in, with my right foot and then my left foot, and that left foot gave, you know, it slipped, and–

[7] Q. Was there something inside the doorway? A. In the doorway nothing. Just a door mat, like that.

Q. All right. Can you describe that mat to the jury? A. A real old-fashioned very thin, and it was very highly polished, the floor, it was wax on it.

Q. Is this the kind of mat that you would find that people wipe their feet on outside the– A. I don't know. I have never been in a mess like that. It was the cheapest thing I have ever seen.

Q. Now when you stepped on the mat, tell the jury what happened. A. I fell and I fell right–my left foot went under–

Q. Keep your mouth to the microphone, Mrs. Levine. A. And I fell right on the top, you know. I mean I fell and my feet, my legs went under me because I couldn't straighten up. It was a radiator right in the right-hand side, a radiator, and I was holding on I shouldn't hit myself on that. So I fell and I couldn't get up.

Q. Did you go down to the floor? A. I did. I was right on the floor.

[8] Q. All right. Now– A. My husband–

Q. Did anything happen to you when you came down on the floor? A. My husband.

Q. No, what happened to you personally? A. I couldn't get up.

Q. What was bothering you? A. My left foot.

Q. Was it hurting? A. Very bad.

Q. Now– A. I couldn't even move it.

Q. What did your husband do? A. He tried to pick me up and he couldn't pick me up until my grandson came up and he helped him pick me up, and they pulled me up, you know, pulling, my legs dragging, and they pulled me up to her apartment.

* * *

[9] Q. Now, let me ask this question. When you stepped on this mat– A. Yes.

Q. What happened to the mat? A. The mat went under. I don't know where it went. It was a little bit of a thing, a real–

Q. Did– A. –old thing.

Q. –the mat move? A. Yes.

[10] Q. Did it move suddenly? A. It moved when I stepped on it. It moved with me. And I don't know what happened to it. I didn't follow the mat any more.

THE COURT: What was the reason that you went to the apartment building?

THE WITNESS: That is my granddaughter.

THE COURT: You mean you went to pay her a visit?

THE WITNESS: To pay her a visit, that's all.

THE COURT: It was a purely social visit, was it?

THE WITNESS: Yes, sir, a social visit. I felt fine. My husband felt all right. And we said that we were going to see my granddaughter, Glenda.

THE COURT: Did they know you were coming?

THE WITNESS: I called them before.

THE COURT: Told them you would be over?

THE WITNESS: Yes, I called them. She said, "Oh, yes, grandma, come over. We love to have you." And I started to go–

* * *

[12] Q. Mrs. Levine, I am going to show you Plaintiff's No. 1 and No. 2– A. Yes, sir.

Q. And ask you to look at these and tell me whether or not they depict or show what the place looked like on October 12, 1963– A. These are–

Q. Don't talk about that. Just answer the question. Do those pictures show what the place looked like where you

fell? A. I don't see the spot—this is the radiator and this spot right here—that is the radiator. That looks like it, yes.

Q. Look at the other picture. A. This is the outside. No, this is the inside.

THE COURT: Is that the place where you fell?

BY MR. LEVIN:

[13] Q. Is that where you fell? A. Yes, right here.

Q. All right. That's all. A. That's all, where I fell.

* * *

Q. Now, Mrs. Levine, I will show you Plaintiff's No. 3 and ask you is this a picture of what the outside looked like— A. Yes—

Q. Wait until I finish the question. Of the place you went into on October 12, 1963? A. Yes, sir.

Q. Is that what it looked like? The outside? A. (Examining.) You can't tell about the outside, but these, I know this is the porch. This is the walk here, that was outside.

Q. That is all. A. The outside.

* * *

[15] Q. Let me finish the question. How did you get back to the automobile your husband and you came in? A. My husband and my grandson. He is a big fellow.

Q. Talk into the microphone, so the jurors can hear you. A. I never spoke in my life, nervous. My husband and my grandson took me out of there and they pulled me, you know, the few steps, pulled me and I was dragging my foot. I couldn't put my weight on it. And they pulled me in the car and they put me in and my husband took me home.

* * *

[17] So Doctor Friedenberg came and as soon as he examined my foot, my ankle, my foot, he said, "That foot is broken. I can't do anything. The only thing, I will give you some medication for pain."

* * *

[26] CROSS EXAMINATION

BY MR. DOHERTY:

Q. Mrs. Levine, how many times had you gone to this apartment house prior to that time? A. Well—

Q. Approximately. A. You mean, approximately in that year, there were several months, two or three–

Q. When were you there– A. We went there about four or five or six times, something like that.

Q. Well, when were you there prior to October 12, 1963? A. October 12, what?

Q. 1963? A. '63, yes.

Q. That was the day you fell. [27] A. Yes.

Q. When were you there before that? A. Oh, I was there about two or three weeks before, because we were busy. I couldn't go.

Q. When were you there the time before that? A. I couldn't say exactly, you know, when.

Q. How long would you say? A. We had company and we took them over there.

Q. I am trying to find out–you were there now you say three weeks before this October 12? A. Yes, sir.

Q. And then I want to know when you were there before that time. A. Oh. We were there about–it seems to me like every Saturday we used to go because my husband was retired so we used to go there every Saturday, almost every Saturday.

Q. Did you go– A. Or maybe every three weeks, or two weeks, if we had time.

* * *

[30] BY MR. DOHERTY:

Q. Did you ever fall as you went up there before that time? When you went in to see your granddaughter, did you fall at any time? A. No, sir.

Q. Had no trouble walking? A. No.

* * *

[31] Q. Now, as you approached the door to go into where you say in your direct examination this mat was, did you look through–could you see this mat on the floor inside, inside the door? A. I don't remember, to tell you the truth. Did I say it, yes? I didn't remember that. Did I?

Q. I don't know. I am asking you now. A. I don't remember. I didn't look.

Q. Well, now, was this mat there at any other time when you got there or went there? A. Maybe it was there, but I don't know.

Q. You hadn't seen it there before that time, had you? A. I haven't seen it. Maybe they put a new one. I don't know what happened.

Q. This place was well lighted, was it not? A. It was?

Q. It was very well lighted? You could see very well? A. It was very—it was lighted, it was everything, but it was slippery, the floor—

* * *

[32] Q. Now, when you opened the door— A. Yes.

Q. Did you open the door or did your husband open the door? A. He was right in the back of me. He opened the door and I was holding the handle too, was holding on, and it was a very tight—

Q. Well, where was your husband and if he was behind you how did he open the door? You had the handle? A. He was in the back.

Q. Yes. A. Of me. I held my hand on the handle.

Q. What did he do? A. What did he do? I don't know what he do. He was right in back of me.

Q. I thought you said he opened the door. A. He opened the door and I opened the door. It was a very heavy door.

Q. The two of you had to do that? A. Yes.

Q. So then you went in first? A. Yes, sir. I went in first.

Q. Now you say you put your right foot down first? [33] A. Yes, sir.

Q. And then you stepped? A. And—

Q. Another step? A. —then the left foot, yes.

Q. And— A. And the left foot swing right away.

Q. You are sure it was your right foot went in there first? A. Yes.

Q. And then when you stepped another step with your left foot— A. Right, that was—

Q. Wait a minute. You still had a hold of the door? A. Was holding on the door?

Q. Yes. A. No, sir, I fell already.

Q. Well, when you put your left foot over were you on that mat at that time? A. I was on the mat. The mat went under me. I don't know what happened to the mat. I didn't look for the mat any more.

[34] Q. Was it your left foot pushed it out, as you said— A. Yes—

Q. —on direct examination. A. Went under me.

Q. How wide was this mat that you speak of? A. Very small. Here, like that. Here, like that was the mat (indicating).

Q. About 18 inches? A. Must have been 15, or 16 or 17—I didn't measure. I tell you I don't know.

Q. So 15 or 18, either one. A. I don't know.

Q. You made one step with your right foot— A. Yes.

Q. —unto that mat and you put another step out and you still got down on the mat? A. Yes, sir, and I fell so my both feet went under.

Q. Both feet went under you? A. Because it was slippery.

MR. DOHERTY: If Your Honor please, I move that that last statement be stricken.

THE COURT: Which statement was that?

MR. DOHERTY: The last one, slippery or something.

[35] THE COURT: What did you say? I thought you said your feet went out from under.

THE WITNESS: What is it, sir?

MR. DOHERTY: Yes, and then she said something about it being slippery, because it was slippery.

THE COURT: What was slippery, the floor or the mat?

THE WITNESS: You see, the mat was on the floor and the floor was very slippery, you see.

THE COURT: All right.

THE WITNESS: And the mat was very thin straw and (indicating) you know, it went like that.

BY MR. DOHERTY:

Q. Now, let me ask you again certain questions that were put to you on November 30, 1964, in my office. This was about a year after the accident occurred. Do you remember you came there as I asked— A. Was it '64?

Q. Yes. A. All right.

Q. On page 11, I asked you whether or not— A. Makes me sick. I don't feel good.

Q. Start on the top of page 11.

"Q. Will you tell us, did the rug or this mat [36] slip as you put your foot on it?

"A. As I—yes, sir.

"Q. It wasn't after you stepped off that you slipped and fell?

"A. As I opened up the door, and I put my foot on it, my left foot, and as soon as I put it on my foot went under, you know, and I slipped.

"Q. Which one, your left foot?

"A. My left foot, yes, sir.

"Q. Where was your right foot then?

"A. My right foot was under me"—

A. I don't—

Q. "I don't know where, you know. I was close to a—what do you call it?

"Q. Had"—

A. Radiator.

Q. Please.

"Q. Had you gotten inside, entirely inside the door?

"A. What?

"Q. Had you gotten inside the door or was the door just open?

"A. Yes.

[37] "Q. The door was open?

"A. The door was closed."

A. That's right.

Q. "I opened the door. I pushed it.

"Q. As you stepped in you were still holding the door open?

"A. I let the door go."

A. That's right.

Q. "As I opened the door and I was holding and I put my foot under and I started to fall"–

A. Yes.

Q. "And the door, you know, closed.

"Q. Closed on you?

"A. On me.

"Q. Where was your husband?

"A. My husband was right in back of me."

A. That's right.

Q. "Q. What happened?

"A. I fell and I couldn't get up and I got off my foot and nobody came out from the hall there or anybody, and he helped me to go up to my granddaughter. That was about three or four steps to go up, you [38] know."

Did you give those answers to those questions at that time? A. Yes. I stopped–

MR. LEVIN: Just answer his questions.

BY MR. DOHERTY:

Q. Again on page 12, were these questions put to you and you gave these answers?

"Q. Was your husband in front of you or in back of you?

"A. He was in back of me.

"Q. Had he come in?

"A. Yes, sir.

"Q. Was he in when you fell?

"A. I was already lying down. I fell so quick that he came in and he helped me to get up and I couldn't get up, you know.

"Q. He was actually inside at the time you fell?

"A. Yes, sir."

Did you give those answers to those questions? A. That's right.

Q. Again on page 13, at the bottom of the page.

"Q. Was your husband behind you at the time?

[39] "A. Behind me.

"Q. So he had not gotten inside?

"A. No, he didn't get–he was just on the porch

and as soon as he saw me falling he came in."

Did you give those answers to those questions? A. I beg your pardon. I didn't hear you. What did you say, sir?

Q. I am asking you now whether these questions were put to you on this November 30, 1964, and you gave these answers.

"Q. Was your husband behind you at the time?"

A. Yes, sir.

Q. Just keep quiet until– A. Oh, excuse me.

Q. "A. Behind me.

"Q. So he had not gotten inside?

"A. No, he didn't get–he was just on the porch and as soon as he saw me falling he came in.

"Q. And then he helped you upstairs?"

Did you give those answers to those questions at that time? A. He walked right in the back of me. How can it be that he wasn't inside?

[40] Q. I don't know. Did you give those answers to those– A. Well, I don't know. I tell you, I must have been something–something wrong. I don't know. Everything too much, over and over and over.

Q. Now in your direct examination you said that your granddaughter's husband–you call him grandson? A. Yes.

Q. Came down and helped you up to the apartment? A. Yes, sir. I started to cry and he heard me. I started to cry or holler or something, I don't know.

Q. Was your husband and your grandson there at the time? A. They helped me, both of them pulled me up the steps.

Q. Did your grandson come downstairs to where you had fallen? A. Yes, when I was on the floor already.

Q. You hadn't gotten up off the floor? A. Yes.

MR. DOHERTY: Will Your Honor pardon me just a minute.

BY MR. DOHERTY:

Q. Again on page 13.

[41] MR. DOHERTY: Your Honor, I will have to read one of those questions and answers I just read before.

BY MR. DOHERTY:

Q. "Q. So he had not gotten inside?

"A. No, he didn't get—he was just on the porch and as soon as he saw me falling, he came in.

"Q. And then he helped you upstairs?

"A. He helped me and I couldn't walk up, you know, he just almost dragged me up the steps and they stopped to put on ice and things, you know."

Did you give those? A. Ice, yes, sir, I heard you. I heard you, yes.

Q. And then he helped you, you were talking about— A. My grandson, yes, and my husband, they pulled me up the steps to my daughter's. She lived upon the second floor.

Q. I am asking you now whether in answer to that question, "And then he helped you upstairs?" you were talking about your husband? The answer was, "He." You were talking about the husband. "He helped me and I couldn't walk up, you know, he just almost dragged me up the steps and they stopped to put on ice and things, you know."

MR. LEVIN: Your Honor, I am going to object at this [42] point. I think in all fairness he ought to read the next question—

THE WITNESS: He—

MR. LEVIN: Just a minute. He ought to read the next question and the next answer.

MR. DOHERTY: Well, I don't mind.

BY MR. DOHERTY:

Q. "Q. Who is they?

"A. My daughter—my granddaughter and her husband."

A. My granddaughter.

Q. Did she come down there too? A. My granddaughter?

Q. Yes. A. No, sir, only him. He came there, He came, my grandson. She sent him down.

* * *

[57] MR. LEVIN: Your Honor, with the permission of the Court, I would like to place into evidence Interrogatory Number 9, and the answer by the defendant.

THE COURT: What is the interrogatory?

MR. LEVIN: He says it is all right, Your Honor. Ladies and gentlemen, I am going to read a question which was propounded to the defendant, and, under oath, was answered by Joseph C. Murray, who was identified as the Vice President of the Shannon Luchs Company, and his oath was taken on November 16, 1964. Interrogatory Number 9:

> "Do the defendants know of any eye witnesses to the incident which forms the basis of this cause of action? If so, what are the names, addresses, ages and sexes?
>
> "The answer: No."

I would like to do the same with Number 8, Your Honor.

THE COURT: Very well.

[58] MR. LEVIN: Interrogatory Number 8, answered by the same gentleman:

> "On October 12, 1963 were there any doormats in or near the entrance or approachway to 2500 Queens Chapel Road building? If so, how many, manufacturer, description, location, vendor, owner, placing party, how long in use?
>
> "Answer: Apparently on October 12, 1963 a small straw mat was placed near the entranceway by a tenant whose name is unknown to the defendants."

Thereupon

DOCTOR WILLIAM J. TOBIN

was called as a witness by counsel for the Plaintiffs, and having been duly sworn was examined and testified as follows:

* * *

BY MR. LEVIN:

[60] Q. Doctor, directing your attention to this lady here who has been identified as Mrs. Dora Levine, was there occasion in 1963 when she was your patient? A. There was.

Q. Would you tell the jury the circumstances of her being your patient? A. I first saw her on October 15, 1963 because of an injury to her left ankle that occurred when she fell and twisted her ankle on October 12, 1963.

Q. Now, Doctor, did you make a diagnosis? A. Following examination of the patient an X-ray was taken of the left ankle and it revealed a fracture of the lower end of the fibula, f-i-b-u-l-a, which is one of the bones that make up the ankle on the outside.

* * *

[69] NELSON F. RUBIN

was called as a witness by counsel for the Plaintiff, and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEVIN:

* * *

[73] Q. Now, the condition of the hall when you took the pictures the latter part of the week, was it the same as it was on October 12, 1963? A. Yes, it was.

Q. Had there been any changes made whatsoever? A. No.

Q. I am going to show you, Mr. Rubin, what has been marked for identification 1 through 16. Now, you look at those and tell us whether those are the pictures you took? A. Yes, they are.

Q. Now, the pictures which you have just looked through which have been identified as 1 through 16, do they accurately depict the condition of that entranceway of 2500 Queens Chapel [74] Road on October 12, 1963?

MR. DOHERTY: I object to that, if Your Honor please.

THE WITNESS: Yes.

THE COURT: On what ground?

MR. DOHERTY: On the ground he said he took these pictures the following Thursday, which would be four, five days later.

THE COURT: What different does it make? What difference does it make if he testifies the same condition existed as on the date of the accident?

* * *

[75] THE COURT: Was that mat there the day the plaintiff fell?

THE WITNESS: Yes.

THE COURT: All right. What is your next question?

BY MR. LEVIN:

Q. How long had that mat been there? A. That mat was there almost about eight months prior, before she fell.

Q. Do you know who put that mat there? A. I believe the management of the apartment.

Q. Do you actually know? A. No, not exactly, no.

Q. At this place did they have a janitor who went around and cleaned up the place? [76] A. Yes.

Q. Did you ever see him in the hallway? A. A couple of times.

Q. Was this mat there when he was cleaning up the hallway? A. Yes.

Q. Would you give a description of the mat? A. It had a—it was a straw-type mat, basically made for the outside. The straw was woven real close together which had a smooth bottom to it. In other words, no rubber backing. And that is basically what it was—a straw mat.

Q. Did you have occasion to turn the mat over to look underneath of it? A. Yes.

Q. Was there anything attached to the mat that would make it adhere or stick to the floor? A. No.

Q. What type of floor was this in this hallway? A. Asphalt tile.

Q. What was the condition of the floor with respect to cleanliness and polishing and buffing? A. Very clean, very highly glossed shine to it.

MR. DOHERTY: I object to that and move it be stricken.

[77] THE COURT: Overruled. Proceed.

BY MR. LEVIN:

Q. Did you ever see the janitor work on this floor? A. Yes.

Q. What did he use on it? A. I have seen a type of machine that he was using to shine the floor up, and I believe I saw a can of wax.

MR. DOHERTY: I object to that.

THE COURT: Sustained. You can say what you saw,

not what you believe. What did you see him do?

THE WITNESS: I saw him use a machine on the floor.

THE COURT: Just the machine, he said.

BY MR. LEVIN:

Q. Now, I direct your attention back to October 12, 1963. Did something unusual happen with respect to the plaintiff, your grandma? A. Yes.

Q. Tell us what it was. A. She came into the entrance–

THE COURT: You weren't there, were you?

BY MR. LEVIN:

Q. What you saw. A. What I saw. We heard a commotion. My wife and I [78] were sitting in the apartment and we heard a commotion, a couple of people talking, and it sounded like my grandmother and my grandfather, and we opened the door right away, and saw my grandmother and my grandfather, helping her up the steps into our apartment.

Q. Now, let me ask you this question: –

THE COURT: When you first saw them was this outside your door, or down these little steps you were talking about?

THE WITNESS: They were proceeding up on the steps to come to our apartment.

BY MR. LEVIN:

Q. Those steps inside the hallway? A. Inside the hallway, yes.

Q. What did you do? A. I immediately went out and helped my grandfather help my grandmother into the apartment and set her down on the chair.

* * *

[79] Q. Now, Mr. Rubin, I want an expression in terms of degree: what would you say about the surface of this floor in the hallway with respect to it being slippery or not slippery?

MR. DOHERTY: I object to that.

THE WITNESS: The hallway was very highly polished floor. To me, I mean, when we walked into the building it looked like, I presume, waxed, gave it a good shine on the floor–had a terrific shine on the floor.

* * *

CROSS EXAMINATION

[81] BY MR. DOHERTY:

Q. Mr. Rubin, you say that this mat that was in this hallway had been there approximately eight months before? A. Approximately.

Q. Before this accident? A. Before the accident.

Q. And isn't it a fact that the only mat that was ever there, anywhere around, any part that you have to go through, was in front of your door, a straw mat in front of your door, and it was removed time and time again by the manager, or [82] or someone in the apartment house? A. I have never had a straw mat in front of our door. We had a rubber mat.

Q. A rubber mat? A. Yes, sir, a rubber mat.

Q. You mean– A. In front of my door, my apartment door.

Q. And not one of these straw mats? A. No, sir.

Q. And this straw mat was down there all this time, never removed at any time? A. From my–

Q. The one you say that is down at the door. A. I would presume it was moved to be cleaned, for it had to be cleaned, but it was always there when we walked in.

Q. And this mat–did you ever lift it up at any time? A. Yes.

Q. Wasn't it a decayed rotten one that was found there at the time, sometime after your grandmother fell? A. No, sir, it was not a decayed rotten mat.

Q. You say that the mat that you have in these pictures that have been identified here is the mat that was there at the time that your grandmother fell? [83] A. Yes.

Q. And did you see that mat when you went out? A. When I went out–

Q. When you left that day to go to work? A. Yes.

Q. Now, the first time you did see your grandmother was when her husband was bringing her into your room? A. Right.

Q. You didn't go down and help to pick her up and help bring her up the steps? A. We heard the commotion–

Q. The question was, did you help her up the stairs? A. Yes.

Q. You did? I thought you said the first time you saw her, you opened the door in your apartment and her husband was bringing her in at that time? A. I mentioned the fact when I opened the door they were part way up the steps and I went over and helped them up the rest of the way.

Q. Did you ever go down there where she had actually fallen? A. No, sir.

Q. Did you ever see her on the floor? A. No, sir, I didn't.

[84] Q. You don't know just where it was she fell? A. The front entrance, I gather.

Q. The only time you saw her she was walking up the steps, helped up the stairs by her husband? A. Right.

Q. But you didn't see her downstairs there at all at any time? A. No, sir.

* * *

[86] Q. Now, had you ever fallen? A. No, sir.

* * *

[2] THE COURT: Counsel come to the bench, please.

(At the bench:)

THE COURT: I take it you don't have any more witnesses as to liability.

MR. LEVIN: I have the granddaughter.

THE COURT: I am talking about the granddaughter. She went inside and she stepped on this mat and it slipped and she fell.

MR. LEVIN: That is correct.

THE COURT: You don't want to take the eight hundred? Right?

MR. LEVIN: I have indicated that.

THE COURT: I will have to dismiss this case. The Maryland law is identical with the District.

MR. DOHERTY: More severe. It goes further than they did in the District.

MR. LEVIN: Do you want me to talk to her again? I would like to argue the point.

THE COURT: There is no sense of arguing it. I have the cases. There is no difference at all. They owe a duty to tenants, but to a licensee they owe nothing except for [3] wanton and wilfull negligence and hidden danger.

MR. LEVIN: The cases I have don't–

THE COURT: The cases I have do. You can reverse me if you want. I don't care. But you have a chance to take eight hundred dollars and you ought to take it.

MR. DOHERTY: I don't know whether we have it now, if Your Honor please.

THE COURT: Oh yes, you have it.

MR. DOHERTY: You take advantage of my innocence.

THE COURT: Suppose this Court is in error. You can't afford to gamble, either.

MR. DOHERTY: I can afford–I am not paying any bills.

THE COURT: I don't mean you personally. Do you want to talk?

MR. LEVIN: Let me talk to her. May I take her out of the courtroom?

THE COURT: Yes.

(In open court:)

THE COURT: Take the jury out.

MR. DOHERTY: If Your Honor please, may I make a telephone call?

(Short recess.)

[4] (Thereupon, the above proceedings were concluded.)

[2] (Short recess.)

THE COURT: Go ahead.

MR. LEVIN: I would like to at least let her know they are not paying the eight hundred dollars.

THE COURT: She is coming in. Just argue the point to me.

MR. LEVIN: Your Honor, I assume that we are approaching the case as though the defendant has made a motion for a directed verdict; is that correct?

MR. DOHERTY: I will make it, if Your Honor please.

THE COURT: All right. Let's proceed with the argument.

MR. LEVIN: Your Honor, under the cases which I have already cited to the Court in the form of a memorandum that was furnished to the Court in the pretrial statement, I think there is no question that under the Maryland law, as recently announced, that anybody who comes on the premises, such as this lady did, to visit a tenant is entitled to recover for the failure of the management to exercise reasonable care, or [3] ordinary care. And the situation we have here is that, looking at the plaintiff's case in its most favorable light, it was negligent if it placed a mat of this type, intended to be used on the outside, on a polished floor.

Directing Your Honor's attention to the case of Langley Park Apartments, Section H, Inc., versus Lunt, which appears at 199 Atlantic 2d 620, I will read from Page 623, the Maryland Court of Appeals said:

> "There is no doubt in Maryland that where a landlord leases separate portions of his property to different tenants and reserves under his control the passageways and stairways and other parts of the property for the common use of all the tenants, he must then exercise ordinary care and diligence to maintain the retained portions in a reasonably safe condition,"

and they cite the case of Elmore Gardens which appears at 177 Atlantic 2d 263, which I have here and I am going to make reference to.

Now, at that point the Court does not say to whom this duty extends. As I understand Your Honor there is a question in your mind that if this were a tenant there would be no question in your mind—

THE COURT: That is correct. There wouldn't be any question.

[4] MR. LEVIN: My point is they have said again that the landlord owes the same duty to those who come upon the premises–

THE COURT: The law doesn't say that.

MR. LEVIN: I am going to show it to you in cases.

THE COURT: You can't show it to me.

MR. LEVIN: Reading further on Page 263, it says:

> "The multi-unit apartment dwelling is rapidly becoming commonplace, especially in our suburban growing area in around Baltimore City and Washington, D. C. In any one unit are apt to be the very young and very old, non-working residents who seldom venture far beyond the apartment complex. They and all others–they and all others lawfully using the common walkways must be provided with reasonably safe approaches to and from their apartments and the public streets."

Now, I would like to read that again to Your Honor.

THE COURT: You don't have to read it again. I heard you.

MR. LEVIN: To expect these tenants to assume the duty of maintaining the common walks would be impractical. Then they go on and tell the reason why they adopt this rule.

Now, in other cases they have said the same thing, Your Honor.

[5] All right. Now, the duty of the person who leases the premises is identical, under Maryland law, to the person who comes upon the premises as it is to the tenant. Referring Your Honor to the case of Sherwood Brothers versus Eckard, which is cited at 105 Atlantic 2d 207, and I am reading from Page 209:

> "The general rule is that the landlord is liable for injuries to persons on these premises such as guests or customers of the lessee."

THE COURT: And she is not a guest, and neither was she a customer.

MR. LEVIN: She is a guest of–

THE COURT: She is not a guest. She is a licensee. So whether or not a person entering the premises of another bears the legal status of an invitee or whether he is a guest or licensee has to depend on the purpose of the visit, and so long as the purpose of that visit is pleasure, where the visit is of a purely social nature, even though she had been invited by the granddaughter, she is not an invitee, she is a licensee.

MR. LEVIN: I would like to show Your Honor what the same Maryland Court has done in another apartment house situation. I am referring to the case of Sezzin, S-e-z-z-i-n, v. Starken (sic), 49 Atlantic 2d 742, and I am going to read from [6] Page 746, and I want to call the Court's attention to the fact that the Maryland Court has made reference to Restatement of Torts, and this is what they say in this case:

> "It is said in Restatement on Torts, Negligence, Section 360, Parts of Land Retained in Lessor's Control which Lessee is Entitled to Use."
>
> It says:
>
> "A possessor of land who leases a part thereof and retains in his own possession any part which the lessee is entitled to use appurtenant to the part leased is subject to liability to his lessee and any others lawfully upon the land with the consent of the lessee or sublessee for bodily harm caused to them by a dangerous condition upon the part of the land retained in the lessor's control if the lessor, by the exercise of reasonable care, could have discovered the condition, and the unreasonable risk involved therein could have made the condition unsafe."

Now, they are citing from the Restatement of Torts which they adopt, and it says that this rule applies to any others lawfully upon the premises.

Now, I can show it to you right here in the book, so you can see I have read it correctly.

THE COURT: I believe you are reading it right.

[7] MR. LEVIN: So there is no question, Your Honor, that this lady is lawfully upon the premises and that the duty that is owed to her is that duty which the Court of Appeals has set out.

Now, they do not make the distinction between the different categories of licensees in Maryland that we do in the District of Columbia. They take these apartment house cases, multi-unit, and the issue determined there is, is the person lawfully upon the premises. Looking at the nature of the thing, you have an apartment house where management retains control. Now, part of their business is that people live in their houses and they know they are going to have guests and other people come to the place. The management retains the control and, therefore, the management is responsible for the common corridors. Any other rule wouldn't make sense in 1967, Your Honor, and having just read to you where it says over and over again "all others coming upon the land lawfully." It shows it is the same duty that is owed to the tenant, and Your Honor has conceded to me that they owe this duty to the tenant in Maryland.

THE COURT: Bring the jury in.

(Thereupon, the jury entered the jury box.)

THE COURT: Ladies and gentlemen of the jury, this is a civil action brought by the plaintiff, Dora L. Levine, [8] against Doctor Harold H. Katz and Shannon & Luchs for injuries sustained by her when she slipped on a mat in the foyer of this apartment house in Maryland. Whether or not she can recover then depends upon the law of Maryland.

When a person enters upon the land of another person, that person is either a trespasser, a licensee, an invitee, or a guest. There is not question that she was not a trespasser because there was nothing illegal about her proceeding in the corridor of that apartment.

The Maryland rule of law governing the conduct of own-

ers and operators of multi-dwelling apartment projects is the same as the District of Columbia rule.

In Maryland the general rule is that the landlord is liable for injuries to persons on leased premises such as guests or customers of the lessee only to the same extent as he is to the tenant himself. So that it is a legal question that the Court must decide, what category does this plaintiff fall in? Whether she is a person entering the premises of another bearing the legal status of an invitee, or whether she is a guest or a licensee depends upon the purpose of the visit. So long as its object is the pleasure of only the visitor, and in this case the plaintiff, or of some third party, in this case the granddaughter and grandson, or of a purely social nature, even though she had been invited by [9] the grandchildren, she is not an invitee, she is not a trespasser, and she is not a guest.

The only remaining category is that she is a licensee. The Maryland cases, as was stated in Levine versus Miller, 145 Atlantic 2d 418, are in agreement as to the general principle underlying the rule as to the change of status, geographical or chronological, of one who starts as an invitee. The Maryland law is firmly established, says the Court, that the owner of land owes no duty to a licensee except to abstain from wilfull and wanton misconduct and entrapment. A licensee, ladies and gentlemen, is a person on the land of another not by invitation or permission, but rather by mere acquiescence or sufferance. Therefore, he takes upon himself the risk of unconcealed dangers which are natural to the place even though they could have been avoided by the exercise of proper care on the part of the owner.

In other words, the landlord is liable to such a person if he knowingly permits him to run upon a hidden peril or if he maintains a hidden engine of destruction, or if he intentionally wantonly or wilfully injures him.

The testimony in this case doesn't prove that.

The defendant having made a motion for a directed verdict, the Court grants the motion, and you are directed to return a verdict for the defendant.

[9-A] (Thereupon, at 11:45 a.m., the above proceedings were concluded.)

[Filed March 15, 1967]

VERDICT AND JUDGMENT

This cause having come on for hearing on the 14th day of March 1967, before the Court and a jury of good and lawful persons of this district, to wit:

[List of jurors' names omitted]

who, after having been duly sworn to well and truly try the issues between Dora L. Levine, plaintiff and Dr. Harold H. Katz and Shannon & Luchs Company, defendants and after this cause is heard and given to the jury in charge, they upon their oath say this 15th day of March, 1967 that they find for the defendants against said plaintiff, by direction of the Court.

WHEREFORE, it is adjudged that said plaintiff take nothing by this action, that said defendants go hence without day, be for nothing held and recover of plaintiff their costs of defense.

Robert M. Stearns, Clerk

* * *

Judge Edward M. Curran, Presiding

[March 21, 1967]

PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff moves the Court to set aside the directed verdict of the Court returned herein on March 15, 1967, and the judgment entered thereon March 15, 1967, and to grant a new trial on the following ground:

The Court erred when it directed a verdict against plaintiff on the ground that the defendants did not owe her a duty to exercise ordinary care so that she, a person lawfully using defendants' apartment house premises, would be safeguarded against conditions, whether permanent or temporary, which make them dangerous to the tenants or their guests, even though plaintiff was injured in a portion of defendants' apartment house, over which defendants retained exclusive control.

This motion is based upon the record and proceedings in this action, and for reason for granting the motion, the plaintiff refers to her annexed points and authorities.

JOSEPH LEVIN
Attorney for Plaintiff

[Certificate of Service dated March 20, 1967]

[Filed March 24, 1967]

ORDER DENYING MOTION FOR A NEW TRIAL

This cause came on to be heard upon the motion of the plaintiff for a new trial, the points and authorities in support thereof, and the defendants' opposition to the motion for a new trial filed by the defendants, Dr. Harold H. Katz, et al, and having been duly considered, it is, by the Court, this 24th day of March, 1967,

ORDERED that the said motion be, and the same hereby is, denied.

/s/ Curran
Judge

[Certificate of Mailing, March 23, 1967]

[Filed April 21, 1967]

NOTICE OF APPEAL

Notice is hereby given this 21st day of April, 1967, that DORA L. LEVINE hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 24th day of March, 1967 in favor of Dr. Harold H. Katz and Shannon & Luchs Company against said Dora L. Levine.

JOSEPH LEVIN
Attorney for Plaintiff
1511 K Street, N.W. #843
Washington, D. C. 20005

DOCKET ENTRIES

1964

June 25 – Complaint, appearance, jury demand filed.

June 25 – Summons * * * Complaint issued.

Aug. 5 – Answer of defts to complaint; appearance of C. Doherty filed

* * *

Aug. 11 – Interrogatories of pltff to deft c/m 8/10/64

Nov. 20 – Notice by deft of taking deposition of Dora L. Levine c/m 11-18-64

Nov. 20 – Answer of deft to interrogatories

Dec. 18 – Deposition of pltff.

1965

Feb. 16 – Certificate of readiness by pltff.

Nov. 15 – List of witnesses by pltff

Nov. 15 – Pretrial proceedings dismissing complaint as to Pltff. No. 2; deft may take deposition of pltf. Pretrial Examiner

Nov. 15 – Oral motion of pltff objecting to pretrial Examiner's ruling permitting deft to take deposition of pltff argued and granted (order to be presented) Sirica J

Nov. 16 – Order overruling pretrial Examiner and granting oral motion of pltff denying defts leave to take deposition of pltf Sirica J.

1967

Jan. 10 – List of witnesses by deft.

Mar. 15 – Trial resumed; same jury and two alternate jurors; verdict for defts vs. pltff, by direction of the Court; jury discharged. Curran, C.J.

Mar. 15 – Verdict and judgment for defendants vs. plaintiff, by direction of the Court, with costs vs. pltf, Curran, C.J.

Mar. 21 – Motion of pltf for new trial; P&A

Mar. 21 – Opposition of defts to motion for new trial

* * *

Mar. 22 – Reply of pltf to opposition of defts to pltf's motion for a new trial

Mar. 24 – Order denying motion of pltf for a new trial, Curran, C.J.

April 21 – Notice of Appeal by pltf.

BRIEF FOR APPELLEES

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,145

DORA L. LEVINE,
Appellant,

v.

DR. HAROLD H. KATZ, T/A
QUEENS PARK PLAZA APARTMENTS,
and
SHANNON & LUCHS COMPANY,
(A Delaware Corporation)
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CORNELIUS H. DOHERTY
1010 Vermont Avenue, N.W.
Washington, D.C. 20005
Attorney for Appellees

Washington, D. C. - THIEL PRESS - 202 - 393-0625

QUESTION PRESENTED

The only question presented is whether the trial Court acted properly in directing a verdict for appellees where it appeared that the injured party was a social guest of a tenant and where there was no evidence to disclose that the appellees had created a dangerous condition of which they should have had knowledge, and there being no proof on the part of the appellant there was no breach of duty on the part of the appellees.

INDEX

TABLE OF CASES

IN THE

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,145

DORA L. LEVINE,
Appellant,

v.

DR. HAROLD H. KATZ, T/A
QUEENS PARK PLAZA APARTMENTS,
and
SHANNON & LUCHS COMPANY,
(A Delaware Corporation)
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF CASE

The appellees, in their answer to the complaint, admitted that on October 12, 1963, they were the owners and operators of the Queens Park Plaza Apartments which were located on Queens Chapel Road, Hyattsville, Prince George's County, Maryland, and denied that plaintiffs were in any way injured or damaged by reason of any negligence of defendants (JA 3).

The appellant's granddaughter, with her husband, Nelson F. Rubin, was a tenant in the premises and the appellant was on the premises for the purpose of visiting her granddaughter. Appellant stated, in referring to prior visits, that they were there about – it seems to me like every Saturday we used to go because my husband was retired so we used to go there every Saturday, almost every Saturday (JA 9); that she had never seen the mat before that day; that the mat was on the floor and the floor was very slippery.

Appellant called as her witness her grandson, Nelson F. Rubin, who stated that the mat had been there about eight (8) months and believed that it was put there by the management. He further stated that the floor was asphalt tile, very clean, very highly glossed shine to it (JA 18). The witness stated that he had never fallen (JA 21).

The Court then asked appellant's counsel if he had any more witnesses as to liability and counsel's answer would indicate that he had no other witnesses as to liability (JA 21).

A motion was made for a directed verdict and granted by the Court.

SUMMARY OF ARGUMENT

The action of the trial Court in directing a verdict for the appellees was proper for there was no evidence of any negligence on the part of the appelllees which would warrant the submission of the case to the jury for their determination.

ARGUMENT

The appellant was not a tenant of the premises and merely on the premises for the purpose of visiting her granddaughter.

The trial Court, in directing a verdict, relied upon the case of *Levine v. Miller*, 218 Md. 74, 145 A.(2d) 418, and which correctly covered the Maryland law. The facts of that case, briefly, are that appellant, Janet Levine, lived with her parents at Spring Knoll Apartments in Silver Spring, Maryland.

On occasions she was permitted to use a recreation room in the basement of another building which was kept locked, and any tenant desiring to use the room could apply for the key to the room to be returned when the use was over. Janet returned the key but left the door unlocked and returned without permission and was injured by the falling of a radiator, and the trial Court directed a verdict for the defendants.

The Court of Appeals of Maryland, in affirming the judgment of the trial Court, at page 420 of the Reporter, made the following statement:

> "We turn to the argument of the appellants that the recreation room was maintained by the landlords for the common use of the tenants so that, in using it, Janet was an invitee to whom was owed the duty of ordinary care, or a licensee to whom was owed the duty of a warning of hidden danger, such as the unattached radiator. Where a landlord leases separate portions of a property to different tenants and reserves under his control halls, stairways and other portions of the property used in common by all of the tenants, he is obliged to use reasonable diligence and ordinary care to keep the portions retained under his control in reasonably safe condition."

The Court further stated, at page 421 of the Reporter, the following:

> "Maryland cases are in agreement as to the general principle underlying the rule as to the change of status, geographical or chronological, of one who starts as an invitee. Gordon Sleeprite Corporation v. Waters, 165 Md. 354, 358, 168 A. 846; Pellicot v. Keene, 181 Md. 135, 139, 28 A.2d 826. The Maryland law is firmly established that the owner of land owes no duty to a trespasser or licensee, even one of tender years, except to abstain from wilful or wanton misconduct and entrapment."

On page 9 of appellant's brief is the reference to the case of *Langley Park Apartments v. Lund,* 234 Md. 402, 199 Atl. (2d) 620, and she has set out a part of a paragraph in that

opinion as sustaining her point that a social visitor is entitled to the same care as the tenant, and it is believed that the full statement on this point would be helpful to the Court and is taken from page 623 of the Reporter, and the following includes the statement of the appellant as set forth on page 9 of the brief and the sentences following this statement are also included and underlined:

> "The multi-unit apartment dwelling is rapidly becoming commonplace, especially in our growing suburban areas in and around Baltimore City and Washington, D.C. In any one unit are apt to be the very young and the very old, non-working residents who seldom venture far beyond the apartment complex. They, and all others lawfully using the common walkways, must be provided with reasonably safe approaches to and from their apartments and the public streets. *To expect these tenants to assume the duty of maintaining the common walks would be impractical.*"

The appellant in her brief refers to the case of *Landay v. Cohn*, 220 Md. 24, 150 A.(2d) 739. This was before the Court of Appeals of Maryland on the refusal of the trial Court to permit the appellant to amend his declaration after the first three demurrers had been sustained with leave to amend. The case was remanded without affirmance or reversal for further proceedings with the appellant to pay the costs. The Court did make the following statement on page 740 of the Reporter:

> "Where a landlord leases separate portions of a property to different tenants and reserves under his control halls, stairways or other parts of the property for use in common by all the tenants, he must use ordinary care and diligence to maintain the retained parts in reasonably safe condition."

One of the cases listed by the Court in support of this statement was *Levine v. Miller*, 218 Md. 74, 145 A.(2d) 418, which is the case upon which the trial Court relied in directing a verdict for the appellees.

The latest statement of the Maryland Court of Appeals is the case of *Paquin v. McGinnis*, decided May 4, 1967, and cited as 229 A.(2d) 86, in which the question presented was what duty is owed by a host to a social guest in his home. The facts, briefly, werethat Paquin and his wife were house guests of McGinnis and his wife. Paquin and his wife, who lived in Rhode Island, came to Maryland to visit their daughter who was a nun in a local convent. They were invited by the McGinnis to stay at their home when appellants visited the area, and they occupied a bedroom which was furnished with a double-bed and other furnishings. There was a small scatter rug on each side of the bed and the floor was hardwood, which was polished and shiney and the house was well-kept.

On May 11, 1963, when Mrs. Paquin stepped around the bed to turn down the blankets, she stepped on the scatter rug which slipped and she fell. The testimony further was that the husband, on a prior visit, had noticed the rug and pushed the one on his side underneath the bed and did so on the last visit.

Judge Parker, the trial judge, in the Circuit Court for Prince George's County, directed a verdict for the defendants.

The Court of Appeals, at page 88 of the Reporter, among other things, made the following statement:

> "A social guest who enters a premise at the express or implied invitation of the host is not an invitee in a legal sense even though he enters the premises upon the basis of the invitation."

The Court further in its opinion made the following statement on page 88 of the Reporter:

> "The host has no duty to warn of dangers or defects of which he had no knowledge or means of knowledge, nor does he have a duty to give a warning of a condition which should be obvious to the guest. Restatement (Second), Torts, supra, comments a, b, c, and d."

On page 89 of the Reporter is the following:

> "The use of hardwood, polished, waxed floors, furnished with rugs, in homes is a matter of common knowledge; and this type of floor and furnishing is not inherently dangerous or a hazard to the safety of a social guest. * * * There was nothing in evidence to show that there was anything unusual about the rug or the condition of the bedroom. It is a matter of general knowledge that scatter rugs on polished hardwood floors will occasionally slip or move a little. There was no evidence that appellees should have expected that Mrs. Paquin would not discover or realize that the rug might slip. There was no evidence that the appellees knew that they had created a dangerous condition and none that is sufficient to show that they should have so known. Not knowing that an unreasonable risk existed, there was no breach of duty on their part in failing to warn the appellants of a hazard of which they themselves were aware."

The Transcript of Testimony Is a Necessary Part of the Appeal

Counsel for the appellees did object to just a statement of the proceedings because counsel for the appellant insisted that the record on appeal should contain the record of the bench conference relative to a settlement.

This Court knows that the civil trial judges do spend considerable time in trying to get the parties to settle their cases. Parties have been known to demand large sums in settlement at the beginning and end up accepting a pittance.

Such information is not a proper part of the record on appeal and has nothing whatever to do as to whether the trial Court erred in directing a verdict.

It is apparently not unusual that a record on appeal contain some matter concerning testimony of illness or a financial situation suffered by the plaintiff in an apparent endeavor or to attempt to reach the sympathy of the panel hearing the appeal.

The action of counsel for the appellees was not unreasonable under the circumstances.

The record upon which the Court directed a verdict should be before the Appellate Court when it is required to pass upon the action of the trial judge.

CONCLUSION

It is respectfully submitted that the record discloses no negligent act on the part of the appellees and that the action of the trial Court in directing a verdict for the appellees was proper and that the judgment entered thereon should be affirmed by this Court.

Respectfully submitted,

CORNELIUS H. DOHERTY

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Attorney for Appellees